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ATTORNEYS' FEES

P.F. Chang's denied attorneys' fees in wage and hour case

by Ryan McCoy
Carothers DiSante & Freudenberger LLP

California wage and hour law is a convoluted landscape when it comes to determining when a prevailing employee or employer can recover attorneys' fees and costs. Under California Labor Code Section 1194, an employee who wins a lawsuit against her employer for nonpayment of overtime compensation is entitled to recover reasonable attorneys' fees. An employer that successfully defends against such a claim, however, is not. This unique "one-way fee-shifting" provision is an exception to the normal "American rule" that each party bears its own attorneys' fees.

This American rule governs many claims for violations of the California Labor Code, including claims for missed meal periods. Yet the California Legislature has given claims for overtime compensation "special treatment" and views them as important to a "stable job market." In turn, California courts have recognized that this "one-way fee-shifting" provision in favor of employees recognizes the public policy of protecting an employee's right to file an overtime claim without facing the prospect of financial ruin. If an employer were able to recover its attorneys' fees incurred in defending against an overtime claim, employees would be chilled from filing otherwise valid overtime claims.

Failed misclassification claim results in huge bill

Cynthia Ling sued P.F. Chang's following her termination as a floor manager. She alleged she was misclassified as exempt and sought unpaid overtime wages and premium pay for failure to provide meal and rest periods. She also sought restitution for unfair competition as well as her attorneys' fees and the costs of the lawsuit.

At arbitration, the issue of whether Ling was misclassified as exempt was hotly contested. Ling claimed that a chronic staffing shortage required her to spend the majority of her time performing nonexempt hourly work. Ultimately, the arbitrator issued an order rejecting her claim and observed that she "was unable or unwilling to conform to [P.F. Chang's] expectations that she manage, not perform nonexempt, hourly functions; in fact, Ms. Ling was eventually terminated primarily for performance issues which included her inability, despite coaching, to manage the floor within [the employer's] legitimate expectations."

However, P.F. Chang's didn't contest (1) Ling's nonexempt status while working for nine weeks as a trainee or (2) its failure to provide duty-free meal periods during her training time. As a result, the arbitrator awarded Ling \$1,038

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for missed meal periods during her training time and \$7,668 in waiting-time penalties for missed trainee meal periods.

In light of P.F. Chang's success in its defense of Ling's exempt classification, the arbitrator declared the employer to be the prevailing party because Ling prevailed only on a "relatively minor issue." Because of that finding and P.F. Chang's total victory on the overtime claim, the arbitrator awarded the employer \$212,685 in attorneys' fees and \$29,046 in costs even though the missed meal period claim was "factually inextricably intertwined" with the overtime claim.

Faced with a huge bill of fees and costs, Ling petitioned the trial court to toss out the arbitration award, arguing that public policy and Section 1194 precluded P.F. Chang's from recovering any attorneys' fees. The trial court ruled that the employer was indeed precluded from recovering fees and costs "on [Ling's] missed meal period claim to the extent the latter was inextricably intertwined with the overtime claim," and it sent the case back to the arbitrator.

The arbitrator issued a new award, and the trial court entered judgment clarifying that Ling was deemed the prevailing party and was therefore entitled to costs of \$18,936. It also ruled that no attorneys' fees or costs award should be issued in favor of the employer. Both parties appealed.

When attorneys' fees may be awarded

The court of appeal held that an employer isn't entitled to recover fees for defeating an employee's claim for overtime wages because Section 1194 "provides only for a successful plaintiff to recover attorney's fees and costs." Section 1194 is a "one-way fee-shifting statute" that "preclude[s] an employer from collecting fees and costs even if the employer prevails on a minimum wage or overtime claim." Additionally, the court held that the recently amended Labor Code Section 218.5 permits employers to recover attorneys' fees and costs only if the employee filed the action for unpaid wages in bad faith.

The court further held that Ling wasn't entitled to any attorneys' fees for her successful (albeit limited) victory on her missed meal period claims since in 2012, the California Supreme Court clearly held in *Kirby v. Inmoos Fire Protection, Inc.*, that "the Legislature intended missed meal periods claims to be governed by the default American Rule that each party bear its own attorneys' fees."

Finally, the court upheld Ling's award of costs under Code of Civil Procedure Section 1032, which awards costs as a matter of right to a prevailing party "in any action or proceeding" even if the "net monetary recovery" (in this case, \$1,038) is "partial" or "limited." When the dust finally settled, Ling was awarded her costs but not her attorneys' fees, and P.F. Chang's was denied all of its costs and attorneys' fees. *Ling v. P.F. Chang's China Bistro* (California Court of Appeal, 6th Appellate District, 3/25/16).

Bottom line

This case is a good summary of California's current landscape regarding when attorneys' fees and costs are available in wage and hour cases. Because of the public policy embedded in Section 1194, only employees are entitled to recover their attorneys' fees when prevailing on an overtime claim, and neither a court nor an arbitrator can award attorneys' fees to a successful employer, even if a claim for overtime is "inextricably intertwined" with a meal period or other wage claim.

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Under Section 218.5, employers can recover attorneys' fees and costs only if the employee filed the action for unpaid wages in bad faith. Finally, neither the employer nor the employee is entitled to attorneys' fees premised on a missed meal period claim. Of course, you should always make sure to maintain and enforce compliant wage and hour policies in an effort to avoid costly litigation in the first place.

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